

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

WAFFLES OF HAWAII,

Respondent.

CASE NO. OSH 2011-11

ORDER NO. 444

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference/settlement conference in this matter held by the Hawaii Labor Relations Board (Board) on July 25, 2011 and attended by Respondent's Robyn M. Kuwabe, Deputy Attorney General, for Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Complainant), and Steven Smith, for Respondent WAFFLES OF HAWAII (Respondent), IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial is:

1. Citation 1, Item 1a: 29 CFR 1910.132(d)(1)

Whether the characterization as "Serious" and the associated penalty of \$375.00 resulting from Citation 1, Item 1a, of Inspection No. 313081887, was valid and proper.

Citation 1, Item 1a alleged:

29 CFR 1910.132(d)(1) was violated because:

The employer did not conduct a job hazard analysis for employees working with hazardous chemical products containing ingredients such as sodium hydroxide, acetone, ethyl acetate, methanol, toluene, light aliphatic

solvent naphtha, and xylene. Use of these chemical containing products without appropriate personal protective equipment can cause burns to the skin and eyes, dizziness, drowsiness, unconsciousness, respiratory irritation, etc.

2. Citation 1, Item 1b: 29 CFR 1910.133(a)(1)

Whether the characterization as “Serious” resulting from Citation 1, Item 1b of Inspection No. 313081887, was valid and proper.

Citation 1, Item 1b alleged:

29 CFR 1910.133(a)(1) was violated because:

The employer did not ensure that employees who use Zep Industrial Purple Cleaner and Degreaser Concentrate, a product that is a corrosive liquid, used appropriate or face protection. Use of corrosive liquids without proper eye or face protection can result in permanent eye damage.

3. Citation 1, Item 2: 29 CFR 1910.151(c)¹

Whether the characterization as “Serious” and the associated penalty of \$375.00 resulting from Citation 1, Item 1b of Inspection No. 313081887, was valid and proper.

Citation 1, Item 2 alleged:

29 CFR 1910.151(c) was violated because:

An emergency eye wash and shower was not provided for employees working with corrosive chemical products (Zep Industrial Purple Cleanser and Degreaser

¹At the initial conference/settlement conference, Respondent’s representative indicated that it contested the entire citation. Complainant’s counsel objected to the inclusion of Citation 1, Item 2 in the instant contest, arguing that Respondent’s letter of contest, dated May 5, 2011, did not specifically include Citation 1, Item 2. The Board will include the item for the purpose of this Pretrial Order and Complainant may make an appropriate motion in due course.

Concentrate). Exposure to corrosive chemical products without an emergency eyewash can lead to permanent eye damage and/or serious chemical burns.

4. Citation 1, Item 3a: 29 CFR 1910.1200(e)(1)

Whether the characterization as “Serious” and the associated penalty of \$375.00 resulting from Citation 1, Item 3a of Inspection No. 313081887, was valid and proper.

Citation 1, Item 3a alleged:

29 CFR 1910.1200(e)(1) was violated because:

The employer did not create and implement a written hazard communication program for employees working with hazardous chemical products containing ingredients such as sodium hydroxide, acetone, ethyl acetate, methanol, toluene, light aliphatic solvent naphtha, and zylene. Use of these chemical containing products without a hazard communication program can cause employee exposure and result in burns to the skin and eyes, dizziness, drowsiness, unconsciousness, respiratory irritation, etc.

5. Citation 1, Item 3b: 29 CFR 1910.1200(g)(1)

Whether the characterization as “Serious” resulting from Citation 1, Item 3a of Inspection No. 313081887, was valid and proper.

Citation 1, Item 3b alleged:

29 CFR 1910.1200(g)(1) was violated because:

The employer did not obtain and maintain Material Safety Data Sheets (MSDS) for chemical products being used in the workplace (i.e. Zep Industrial Purple Cleaner and Degreaser Concentrate, Sunnyside Corp 457 Lacquer Thinner, and Rust-Oleum Specialty High Heat - Bar-B-Que Black). The unavailability of MSDS in a situation where employees become exposed may

delay the necessary and appropriate medical treatment needed.

6. Citation 1, Item 3c: 29 CFR 1910.1200(h)(1)

Whether the characterization as “Serious” resulting from Citation 1, Item 3c of Inspection No. 313081887, was valid and proper.

Citation 1, Item 3c alleged:

29 CFR 1910.1200(h)(1) was violated because:

The employer did not provide hazard communication training to employees who work with hazardous chemical products containing ingredients such as sodium hydroxide, acetone, ethyl acetate, methanol, toluene, light aliphatic solvent naphtha, and xylene. Use of these chemical containing products without appropriate training can cause burns to the skin and eyes, dizziness, drowsiness, unconsciousness, respiratory irritation, etc.

- B. The deadline for the parties’ final naming of witnesses is **September 14, 2011**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness’s addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **October 19, 2011**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. Trial in this matter is scheduled for **November 15, 2011 at 9:00 a.m.** in the Board’s hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.

- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, July 26, 2011.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SESNITA A. D. MOEPONO, Member



ROCK B. LEY, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General
Steven Smith